

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Beckley Division**

DAVID M. DAUGHERTY,

Plaintiffs,

v.

Civil Action No. 5:14-cv-24506

**EQUIFAX INFORMATION
SERVICES, LLC, and
OCWEN LOAN SERVICING, LLC,**

Defendants.

**DEFENDANT OCWEN LOAN SERVICING, LLC’S
MOTION FOR EMERGENCY HEARING ON MOTION TO CONTINUE**

Defendant Ocwen Loan Servicing, LLC (“Ocwen”), by counsel, respectfully requests the Court to hold an emergency hearing on its Motion to Continue Trial and Amend Scheduling Order (“Motion to Continue”) (ECF No. 149).

Ocwen understands, by virtue of a voicemail received today from the Court’s Chambers, that the Court has denied Ocwen’s Emergency Motion to Set Aside and Objections to Magistrate Judge Aboulhosen’s Order denying Ocwen’s Motion for Protective Order (ECF No. 146).

The Parties have met and conferred regarding the Equifax deposition and have agreed to postpone its start time to 1:00 p.m. Ocwen was informed by Equifax’s counsel that Equifax is prepared only to testify in regard to the authenticity of over 500 documents (the “Documents”) identified in Plaintiff’s Amended Notice of Deposition (ECF No. 135), and is not prepared to testify about anything else—most obviously, the substance of those Documents (e.g. what the documents mean, what Equifax knew, when Equifax knew it, what Equifax’s policies and procedures were, etc.) that Plaintiff intends to utilize at trial beginning Monday but that Plaintiff

failed to identify pursuant to Fed. R. Civ. P. 26(a)(3) (*see* ECF No. 98) and this Court's scheduling order (*see* ECF No. 12).

As the Court will permit Plaintiff to depose Equifax Information Services, LLC nine months after the depositions deadline and four days prior to trial, Ocwen respectfully requests the Court to continue the trial date and amend the scheduling order to afford Ocwen the opportunity to depose Equifax on the substance of the Documents and related discovery arising from Equifax's testimony, as well as allowing Ocwen to file Motions in Limine regarding the Equifax deposition and the subject Documents.

MEMORANDUM OF POINTS AND AUTHORITIES

Equifax's counsel informed Ocwen today that the Equifax witness will not be prepared to testify about any of the core issues in this case, including why Equifax was reporting Plaintiff's single Ocwen account twice, why one of the tradelines was accurate and the second tradeline was inaccurate, why Equifax continued to report incorrect credit information despite Plaintiff's disputes and Ocwen's ACDV responses showing the account current, why Equifax never identified the duplicative tradeline to Ocwen, what Equifax's policies and procedures are for avoiding reporting a duplicative tradeline, why Equifax failed to correct its erroneous reporting of the duplicative tradeline, etc.

As the Court is now permitting Plaintiff to depose Equifax nine months after the Motions in Limine deadline, Ocwen is further prejudiced by not having the opportunity to file Motions in Limine pertaining to the Equifax deposition.¹ Further, Ocwen will be unable to obtain the deposition transcript and/or related videotape and prepare its motions, arguments, and witnesses in the one business day before trial begins. As described in detail in Ocwen's Motion to

¹ The Court has already denied three of Ocwen's Motions in Limine for being untimely filed under the Court's scheduling order. On April 26, 2016, Ocwen filed its Motion for Leave (ECF 125) and Memorandum in Support (ECF 126) of filing the three Motions in Limine, which remains pending for the Court's ruling.

Continue, which Ocwen fully incorporates herein, Ocwen will be severely prejudiced by the untimely deposition of Equifax if the trial is not continued and the Court does not allow Ocwen to depose Equifax on topics regarding the substance of those documents, such as:

- Who created the Documents;
- What the Documents mean;
- When the Documents were created;
- Where the documents were maintained;
- How employees are trained with respect to the creation of those Documents; and
- Equifax's policies and procedures with respect to its Document creation and record keeping.

Furthermore, one of the three Motions in Limine this Court denied for being untimely filed pertained to the precise documents Plaintiff is seeking to authenticate in his deposition of Equifax. Fundamental due process prevents trial by ambush and one-way application of the Federal Rules of Civil Procedure and the Court's scheduling order. Therefore, trial must be continued to avoid clear prejudice to Ocwen, reversible error, and the necessity of a new, fair trial.

CONCLUSION

For the reasons stated above and for the reasons stated in its Motion to Continue, Ocwen Loan Servicing, LLC respectfully requests the Court grant this Motion and hold a hearing at the earliest possible time.

Dated: May 12, 2016

Respectfully submitted,

OCWEN LOAN SERVICING, LLC

By: /s/ Jason E. Manning
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2016, I electronically filed the foregoing *Motion for Emergency Hearing* with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participants:

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